



# California Fair Political Practices Commission

June 27, 1989

Fred V. Spallina  
City Attorney, City of Porterville  
132 East Mortan Avenue  
Porterville, CA 93257

Re: Your Request for Advice  
Our File No. A-89-357

Dear Mr. Spallina:

This is in response to your letter requesting advice on behalf of City Councilmember Boyd K. Leavitt concerning his duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

As an employee of the State of California, may Councilmember Leavitt participate in city council decisions concerning the site of a new prison proposed by the State Department of Corrections?

## CONCLUSION

Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency is expressly exempted from the definition of "income". Moreover, a state agency is not a business entity as defined in the Act. Thus, absent some other disqualifying financial interest as set forth in Section 87103, the councilmember may participate in the prison site decisions.

## FACTS

The Porterville City Council is currently considering a proposal by the State Department of Correction to place a new

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

prison in or near the City of Porterville. Although no formal city council decisions concerning the potential prison have yet been made, sometime in the future the city council will be selecting potential prison sites in the city for submission to the State Department of Corrections.

Councilmember Leavitt is an employee of the Porterville Developmental Center. You have informed us that the Porterville Developmental Center is a branch of the State Department of Developmental Services and is therefore a state agency.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(c) Any source of income aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

Councilmember Leavitt is both an employee of and receives a salary from the State of California Department of Developmental Services. However, salary and reimbursement for expenses or per diem received from a state, local or federal government agency is expressly exempted from the definition of "income" for purposes of the Act. (Section 82030(b)(2).) Thus, the councilmember's salary from the State Department of Developmental Services does not create a conflict of interest with respect to decisions affecting the State Department of Corrections. (Section 87103(c).)

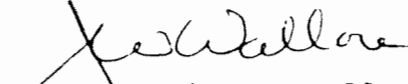
In addition, because a state agency is not an organization or enterprise operated for profit and therefore not a business entity as defined by the Act, the councilmember's employment with the State Department of Developmental Services does not create a conflict of interest concerning decisions affecting the State Department of Corrections. (Sections 87103(d) and 82005; Darcy Advice Letter, No. I-87-296, copy enclosed.)

Thus, absent some other disqualifying financial interest as set forth in Section 87103, the councilmember may participate in the prison site decisions.

If you have any further questions concerning this matter, please contact me at (916) 322-5901.

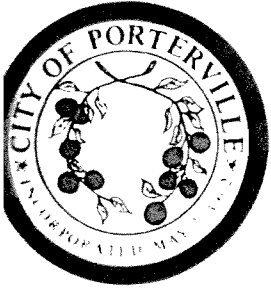
Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosure



# CITY OF PORTERVILLE

OFFICE OF FRED SPALLINA, CITY ATTORNEY

June 9, 1989

California Fair Political  
Practices Commission  
P.O.B. 807  
Sacramento, CA 95804 0807

RE: Request For Opinion Letter

Dear Madam or Sir:

One of our Council members, Boyd K. Leavitt, is an employee of the State of California. He works at the Porterville Developmental Center, which is in the Department of Developmental Services.

The State Department of Corrections is currently considering the Porterville area as a possible location of a new prison facility. The process has only been informal so far, as local input on the issue of a prison, as well as possible locations, is still being received by the State. At some time in the future, however, the Porterville City Council will be expected to select several approved sites for a possible prison. This information is then forwarded to the State of California, who will then proceed, as appropriate, to prepare environmental impact reports on those sites that they deem suitable.

The question is: Does Councilman Leavitt have a conflict of interest as a State employee in participating in any City Council meetings that discuss this issue? It is unclear in my mind as to whether or not the Porterville City Council has any obligation or duty to consider this matter as an agenda item, since it is 100% certain that any prison that is built will be located in the Tulare County area, and not within the city limits of Porterville.

As you might imagine, the possible locations of a prison near a city of only approximately 25,000 in population is a constant topic of discussion in our community. We would of course appreciate your earliest possible assistance on this issue. You may contact Dodie Backus, 916-324-9563, who is the Dept. of Corrections official who is overseeing the possible location of a prison in the Porterville area. You may also contact Boyd K. Leavitt at 209-782-2903 if you have any particular questions for him.



# California Fair Political Practices Commission

June 14, 1989

Fred V. Spallina  
City Attorney  
630 W. Grand  
Portville, CA 93257

Re: Letter No. 89-357

Dear Mr. Spallina:

Your letter requesting advice under the Political Reform Act was received on June 9, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

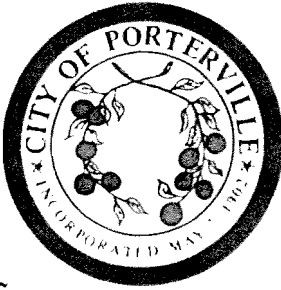
We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*  
Kathryn E. Donovan  
General Counsel

KED:plh



# CITY OF PORTERVILLE

OFFICE OF FRED SPALLINA, CITY ATTORNEY

June 6, 1989

California Fair Political  
Practices Commission  
P.O.B. 807  
Sacramento, CA 95804-0807

RE: Request For Opinion Letter

Dear Madam or Sir:

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The State Department of Corrections is currently considering the Porterville area as a possible location of a new prison facility. The process has only been informal so far, as local input on the issue of a prison, as well as possible locations, is still being received by the State. At some time in the future, however, the Porterville City Council will be expected to select several approved sites for a possible prison. This information is then forwarded to the State of California, who will then proceed, as appropriate, to prepare environmental impact reports on those sites that they deem suitable.

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Thank you in advance for your consideration of this matter.

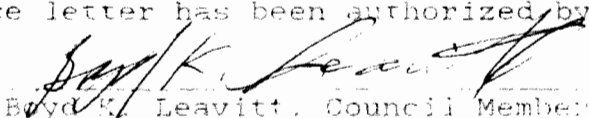
Very truly yours,

FRED V. SPALLINA

FVS:mpl

This request for an advice letter has been authorized by me.

June 6, 1989

  
Boyd K. Leavitt, Council Member  
City of Porterville